

**Application No.:** 09/996,439  
**Filing Date:** November 28, 2001

## **REMARKS**

The following remarks are responsive to the Office Action.

### **Summary of Claim Amendments**

Claims 1-35, 37 and 38 were pending in this application.

Claims 1-9 are now presented in the same form as they were originally issued in U.S. Patent No. 5,597,200. That is, any amendments made to the claims as they were issued in U.S. Patent 5,597,200 have been taken back.

Claims 10-27 are canceled without prejudice herein.

New Claims 28-38 remain pending and have not been amended.

New Claims 39-47 are added herein. These claims correspond to the previous version of Claims 1-9. That is, Claims 39-47 correspond to Claims 1-9 as they existed before this amendment.

Accordingly, Claims 1-9, 28-35, 37-47 are presented for further consideration.

### **Claim Rejections under 35 U.S.C. §251**

#### **Improper Broadening Reissue Application**

Claims 10-27 stand rejected under 35 U.S.C. §251 as being broadened in a reissue application filed outside the two year statutory period. As indicated above and reflected in the present listing of claims, Claims 10-27 are canceled without prejudice herein. Therefore, this rejection is now moot. Accordingly, the Applicant kindly requests the Examiner to withdraw this rejection.

Claims 1-9 are now in their original issued form. New Claims 39-47 correspond to previously pending Claims 1-9, which were not rejected as being improperly broadened.

#### **Defective Oath/Declaration**

Further, Claims 1-35, 37 and 38 stand rejected under 35 U.S.C. §251 as being based upon a defective reissue declaration. Specifically, the Office Action asserts that the reissue declaration filed with the application is defective, because it does not cover the changes set forth in the amendment that was filed on November 28, 2001.

As noted above, the application, as amended herein, does not seek to enlarge the scope of the claims of the original patent, U.S. Patent No. 5,597,200 (the '200 patent). Thus, in accordance with MPEP §1410.01 and 37 CFR §1.172(a), the reissue declaration can be made by

**Application No.:** 09/996,439  
**Filing Date:** November 28, 2001

the assignee of the entire interest of the application. Accordingly, a properly executed Reissue Application Declaration by the Assignee (Form PTO/SB/52) is being submitted herewith. Since this rejection is now moot, Applicant kindly requests the Examiner to withdraw this rejection.

**Claim Rejections under 35 U.S.C. §112**

Claims 10-14 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Since Claims 10-14 are canceled herein, this rejection is now moot. Accordingly, the Applicant kindly requests that the Examiner withdraw this rejection.

**Claims 1-9**

As noted above, Claims 1-9 are amended herein so that they are identical to the claims that previously issued in U.S. Patent No. 5,597,200 (the '200 patent). It should also be noted that Claims 1-9 are now identical to those initially filed with the present application on November 28, 2001. Therefore, the status of these claims is indicated as "Original" herein.

U.S. Patent Application No. 09/239,054 (the '054 reissue application), filed January 27, 1999 and now abandoned is a reissue application of the '200 patent which was previously examined by the present Examiner. As noted above in the "Summary of Interview" section, Claims 1-9, as presented herein, were previously examined in the '054 reissue application. In an Office Action for the '054 application mailed on September 17, 1999, these claims were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,550,523 to Segal ("Segal"). As discussed by the Applicant's attorney, Rabinder N. Narula, during the personal interview of September 16, 2008, Applicant respectfully submits that the rejection of these claims in the '054 application was improper. Accordingly, these claims are being re-presented herein for reconsideration.

The September 17, 1999 Office Action stated that "Figures 1-3 show structure substantially similar to that claimed, wherein the lower portion of the cushion padding 24 may be construed as a support member having lower and upper surfaces with subchannels being formed in the upper surface. The upper portion of the cushion padding may be construed as a porous layer or air-permeable layer which overlays the subchannels, and a cover (second porous layer) 22 encapsulates the whole structure." Page 3 of the September 17, 1999 Office Action.

As explained by Applicant's attorney during the personal interview, Segal does not anticipate Claims 1-9, because Segal fails to disclose, *inter alia*, at least one air subchannel extending along a top surface of the support member as recited in Claim 1. Instead, the seats disclosed in Segal have a padding member with internal passages positioned through a middle portion of the padding member. Please see reference numerals 34 and 35 of Figure 3 and reference numerals 107 of Figure 5 of Segal reproduced below. This is confirmed by the specification of Segal, which recites the following with reference to the seat depicted in Figure 5:

*"The plenum chamber is generally indicated at 107 and, as in the [embodiment illustrated in Figure 1], extends through the foam rubber padding under all the hole 106". (see column 2, lines 66-68; emphasis added)*

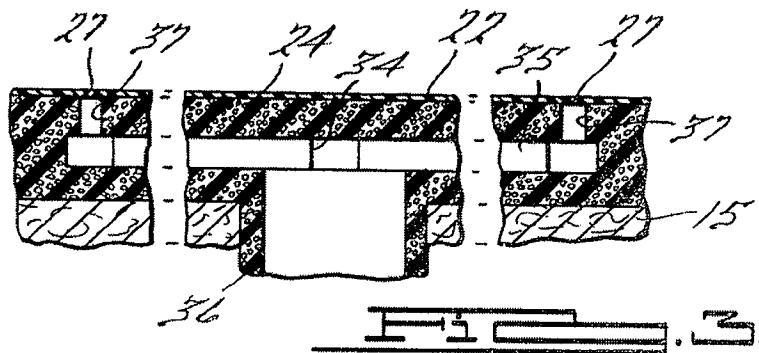


Figure 3 of Segal

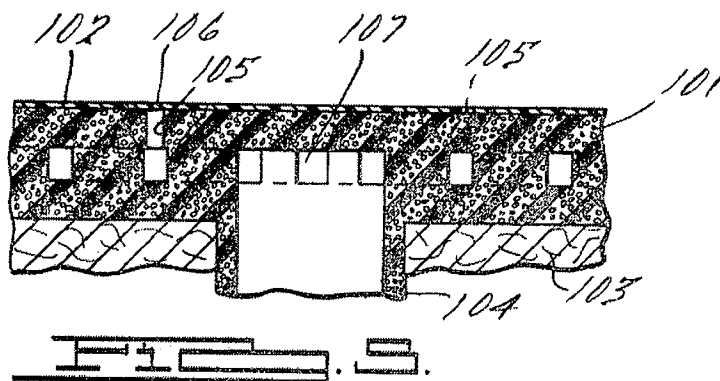


Figure 5 of Segal

Accordingly, there is nothing in Segal that teaches or suggests positioning a subchannel along the top surface of the support member, as claimed herein. Applicant respectfully submits

**Application No.:** 09/996,439  
**Filing Date:** November 28, 2001

that it is not reasonable to characterize the “top surface” of the support member as anything other than its uppermost surface. This is reinforced by the ordinary meaning of the term “top.” For instance, according to the online version of the Merriam-Webster Dictionary (*Merriam-Webster Online Dictionary*, 2008, Retrieved Oct. 16, 2008 <<http://www.merriam-webster.com/dictionary/top>>), “top” is defined as follows (emphasis added):

*a (1): the highest point, level, or part of something : summit , crown (2): the head or top of the head —used especially in the phrase top to toe (3): the head of a plant ; especially : the aboveground part of a plant having edible roots <beet tops> (4): a garment worn on the upper body*  
*b (1): the highest or uppermost region or part (2): the upper end, edge, or surface,”*

In the rejection, the Office Action stated that the subchannels are formed in the “upper surface” of the support member. Even if for the sake of argument Applicant accepts this construction, this interpretation cannot support an anticipation rejection in which the claim states “at least one air subchannel *integral with and extending along a top surface* of the support member.” As noted above, “upper surface” does not mean “top surface.”

Moreover, Claim 1 also states that “a porous member which substantially covers the top surface area of the support member, the porous member having an interface with the air subchannel.” It is clearly claimed that the porous member is a separate member that covers the top surface and has an interface with the air subchannel. The Office Action, in contrast, equates the upper portion of the one-piece cushion padding of Segal with the claimed porous member. However, the one-piece padding clearly does not have an “interface” with the air subchannel and it does not cover “the top surface area of the support member.”

#### Claims 10-27

As discussed above, Claims 10-27 are canceled without prejudice herein to overcome the 35 U.S.C. §251 and 35 U.S.C. §112 rejections in the Office Action and expedite allowance of the present application.

#### Claims 28-38

Claims 28-35, 37 and 38 are not amended in this response. In the Office Action, Claims 28-35, 37 and 38 were rejected only on 35 U.S.C. §251 grounds as being based upon a defective reissue declaration. That is, there were no prior art rejections to these claims. In addition, these claims were indicated to be allowable over the prior art in the previously pending '054 reissue

**Application No.:** 09/996,439  
**Filing Date:** November 28, 2001

application. As discussed, a properly executed Reissue Application Declaration by the Assignee is being submitted herewith in order to overcome this rejection. Accordingly, Applicant respectfully submits that Claims 28-35, 37 and 38 are now in condition for allowance.

Claims 39-47

Newly added Claims 39-47 are identical to Claims 1-9 presented in the Preliminary Amendment filed concurrently with the present application on November 28, 2001. Thus, Claims 39-47 are identical to Claims 1-9 that were examined and rejected by the Examiner in the Office Action. In the Office Action, these claims stand rejected only on 35 U.S.C. §251 grounds as being based upon a defective reissue declaration. That is, there were no prior art rejections to these claims. In addition, these claims were indicated to be allowable over the prior art in the previously pending '054 reissue application. As discussed, a properly executed Reissue Application Declaration by the Assignee is being submitted herewith in order to overcome this rejection. Accordingly, Applicant respectfully submits that these claims, now new Claims 38-47, are in condition for allowance.

No Disclaimers or Disavowals

Although the present communication may include alterations to the subject application or claims, or characterizations of claim scope or referenced art, the Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Related Patents and Applications of Assignee

Applicant provides the following table to aid the Examiner during prosecution. The following U.S. patents and patent applications are related to the above-captioned application in

**Application No.:** 09/996,439  
**Filing Date:** November 28, 2001

that they have at least one listed inventor or assignee in common with the above-captioned application:

Attorney Docket No.	Application No. (U.S. Patent No.)	Filing Date (Issue Date)	Title
AMERGN.006A	08/156,562 (5,597,200)	Nov. 22, 1993 (Jan. 28, 1997)	VARIABLE TEMPERATURE SEAT
AMERGN.006DV1	08/787,038	Jan. 28, 1997	VARIABLE TEMPERATURE SEAT
AMERGN.006RA	09/239,054	Jan. 27, 1999	VARIABLE TEMPERATURE SEAT
AMERGN.006RAC1	09/749,221	Dec. 27, 2000	VARIABLE TEMPERATURE SEAT

Copies of these patents and patent applications, including any office actions, allowances and/or other communications, are available through PAIR. However, if the Examiner so requests, Applicant will be happy to provide the Examiner with copies of any applications, pending claims, office actions, allowances, communications or any other documents, at any time.

Further, Applicant notes for the record that the claims of the present application may be different and/or broader in scope than the claims in any related patent or application. To the extent that any statements made in a related case (such as amendments or characterizations regarding the scope of a claim or prior art) could be construed as a disclaimer of any subject matter supported by the present disclosure, Applicant rescinds and retracts such disclaimer. Accordingly, any listed or referenced prior art may need to be re-visited. Further, any objections or rejections made by the Examiner in the issued and allowed cases identified above may need to be re-visited.

Claims canceled in this application are done so without prejudice. Applicant is not conceding that the previously pending claims are not patentable over the art of record. Applicant reserves the right to later pursue any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

**Application No.:** 09/996,439  
**Filing Date:** November 28, 2001

### CONCLUSION

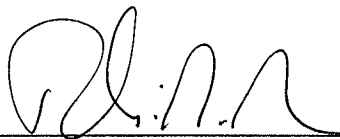
In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims are now in condition for allowance. Accordingly, Applicant respectfully requests reconsideration of the claims in light of the amendments and the above remarks.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 11-11-08

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